

ORIGINAL

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of )

Instituting a Simplified Program for )  
Licensing Personnel Engaged in the )  
Installation, Servicing and Maintenance )  
of Radio Systems Designed to Operate )  
on Private Land Mobile Radio Service )  
Frequency Bands )

RM-8680

DOCKET FILE COPY ORIGINAL

**RECEIVED**

**SEP - 1 1995**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

To: The Commission

OPPOSITION

Dennis C. Brown and Robert H. Schwaninger, Jr. (hereinafter, "we") respectfully submit our Opposition to the Petition for Rule Making filed in the above captioned matter by the Industrial Telecommunications Association, Inc. and the Council of Independent Communications Suppliers (hereinafter, "ITA/CICS"). In support of our position, we show the following.

ITA/CICS has suggested the commencement of a rule making proceeding which would be unnecessary and which would be directed toward the adoption of unnecessary, unenforceable, and ineffective rules. Accordingly, the petition should be dismissed or denied.

The ITA/CICS Proposal Does Not Reach Any Core Problem

We have had substantial experience under two regimes, namely, the era in which the Commission imposed and enforced significant operator licensing requirements and the era

No. of Copies rec'd  
List ABCDE

0211

following the deregulation of transmitter operators. One of us (Brown) was granted a First Class Radiotelephone Operator License more than thirty years ago and, under that license, worked in radio and television broadcasting stations for many years. Concerned that the quality and reliability of radio transmission would suffer, we were strongly opposed to the deregulation of radio operator licensing in 1984. However, history has demonstrated that our concerns were unfounded. During the past decade, the transmission quality and reliability of broadcast signals has obviously improved greatly. During that same period, the number of Private Radio Services stations regulated by the Wireless Telecommunications Bureau has soared, with no substantial evidence of an increase in harmful interference caused by inept technicians.

Along with a dramatic increase in the number of authorized Private Radio Services stations, there may also have been some increase in the number of unauthorized Private Radio Services stations. There surely has been a marked increase in the number of aggressively unauthorized "pirate" Broadcast stations placed in operation. While such increases may, and in some areas surely have, occurred, there is no evidence of any causal relationship between the Commission's 1984 deregulation of operator licensing and any increase in the operation of unauthorized stations.

If unauthorized operation is a growing problem, and one must recognize that it probably is, one can reasonably posit a number of reasons for it, none of which would be remedied in any way by the ITA/CICS proposal. Among possible reasons for any increase

in unauthorized operation over the past decade are the institution of application and regulatory fee collection programs by Congress and the Commission; the certification of monopoly frequency coordinators and accompanying licensing costs; the steadily growing delays in the Commission's station license application processing; the apparent decision by the Commission not to regulate methods of radio equipment distribution in any way; the maintenance of regulatory structures which no longer meet any sound objective; and what appears to be a growing, general contempt for the regulatory authority of the Federal government.<sup>1</sup> The willingness of a worker in a time of declining real wages to turn a screwdriver on an unlicensed transmitter may facilitate unauthorized operation, but it is hardly a cause.

If the Commission is to deal more effectively with unauthorized operation, it must look closely at the root causes, rather than at the ancillary aspects of the situation. At footnote six to its petition, ITA/CICS suggested that a root cause of unauthorized operation may be that "users are able to purchase radios capable of operating in the private radio bands from department store chains or order them from catalogs and mail order warehouses". If a method of marketing and distribution of radio equipment is a root cause, the Commission should deal with that root cause directly by regulating marketing and distribution effectively, rather than regulating some secondary element of the situation.

---

<sup>1</sup> By this statement, one should not assume that we endorse any of the possible reasons which we suggest.

We strongly suggest that the Commission should adopt no regulation which it is not prepared and equipped to enforce. As the Commission is aware, the resources of its Compliance and Information Bureau (CIB) are too scarce to allow it to respond promptly to all complaints of harmful interference. The plan suggested by ITA/CICS is directly counter to the trend of the Commission's actions concerning the activities of the CIB. Far from expanding the CIB's activities, the Commission has recently announced the closing of numerous CIB field facilities.<sup>2</sup> The CIB is actively involved in seeking industry support for privatizing action on interference complaints. Congress has not shown a great willingness to fund new burdens which it has thrust upon the Commission, much less provide a level of funding adequate to maintain more time honored activities. Some forces are seriously proposing that the Commission be abolished, altogether. It should be obvious that this is not an auspicious time for consideration of expansions of the Commission's enforcement activities.

**The Commission Should Be Sure That Certain Conditions Exist  
Before Considering More Regulations**

The Commission has, in the past couple of years, adopted new rules which it apparently lacks the resources to enforce. For example, the Commission has a backlog of thousands of unresolved complaints of "slamming" by interexchange carriers, and a

---

<sup>2</sup> The Chairman announced the most recent reductions and closures in a Statement released on August 17, 1995. In fairness to ITA/CICS, it must be acknowledged that the retrenchment of the CIB has generally occurred subsequent to the filing of the ITA/CICS petition.

substantial number of complaints of violations of its regulations concerning unsolicited advertising by telephone and by fax. A very large backlog of Finder's Preference Requests has developed within the Wireless Telecommunications Bureau. Given its recent, unfortunate experience in adopting regulations which it is not prepared to enforce, the Commission would not be well advised to adopt the rule amendments suggested by ITA/CICS.

When an agency adopts rules which it is not prepared to enforce strenuously, such rules are worse than ineffective. Such rules create disappointment and disillusionment in the agency by the public. To avoid disappointing the public in the instant matter, the Commission should dismiss the ITA/CICS proposal.

The Commission should not even consider the adoption of any rule which it does not assuredly have the resources to enforce. The ITA/CICS proposal would have the Commission grant an operator license based solely on the presentation of a "certificate issued by an organization or committee representative of users in the private land mobile services attesting that the applicant is technically qualified". Were the Commission to base its grant of an operator license solely on the certificate of a private organization or committee, the Commission could not reasonably do so without imposing regulatory oversight over the tests and the testing methods used by the private organization or committee to be sure that they were adequate to determine a candidate's qualifications. This element of a sound regulatory program is essential if there is to be any factual basis for an adjudicatory decision by the Commission to grant an operator license.

The Commission's own experience with commercial operator licensing should demonstrate the difficulty of the Commission's assessing the validity of a test. Although one of us was required in taking the exams demonstrating qualifications for the First Class License to draw a diagram of a Heising modulation system and to calculate the impedance of an open-wire transmission line, no one has ever asked us for any such service again in more than thirty years. More realistic tasks were to isolate and replace a faulty capacitor, solder a connector onto a cable, or change antenna pattern at the time specified on the station license, but those things were not on the Commission's test. In sum, if the Commission is to take an organization's word for the qualifications of an operator, the Commission must be prepared to assure itself that the organization's determination is valid with respect to the tasks actually to be performed under the license.

To illuminate the oversight problem which the ITA/CICS plan would pose for the Commission, consider the hypothetical organization "Unlicensed Radio Station Calibrators United (U-RaSCal-U)". U-RaSCal-U would be able to demonstrate that it was, as suggested by ITA/CICS, "representative of users in the private land mobile services" (specifically, those users who did not hold any station license), but that, alone, would not be sufficient. The Commission would also need to be assured by its own oversight that the organization would determine an applicant's qualifications by more than asking two questions, namely 1) "Want a ticket ?" and 2) "Got 250 bucks on you ?". If the Commission is to accept the determination of a private organization as to a license applicant's qualifications, it must be prepared to review the validity of the testing methods for the tasks to be regulated.

### The Suggested Rule Would Not Be Enforceable

The rule suggested by ITA/CICS would be unenforceable on its face. Proposed Rule 90.433 would provide that all adjustments "should be performed by or under the immediate supervision and responsibility of" a licensed operator. Perhaps they should. However, rules which are normative (that is, which suggest what should be the situation), instead of mandatory (that is, which state that which shall be required), are unenforceable on their face. They may be useful as friendly advice, but they lack any standard which must be met and they demonstrate a lack of conviction by their promulgator that any standard shall be met.

While the petition of ITA/CICS suggests that, under that proposal, an operator would have "a license to 'protect'," the petition proposed no rule concerning the actions of the licensed operator. Rule 90.433(c), as suggested by ITA/CICS, would be applied only to a station licensee, rather than to a licensed operator. The petition of ITA/CICS suggested no rule which would place the licensed operator at any risk to the continued validity of his license. If a licensed operator adjusted an unlicensed transmitter, there would be no one whom the Commission could hold responsible, because the rule requires nothing of the licensed operator and there was, perforce, no station licensee. Because the suggested rule would not be enforceable upon a licensed operator under any circumstances, the licensed operator would have no concern that his license would need to be "protected".

The ITA/CICS petition appears to raise an issue as to who is responsible for the unauthorized operation of a transmitter. Given that the Commission does not prohibit the

complete construction of a Private Radio Services station prior even to filing an application for a license to operate it, there is substantial doubt that any person is delinquent in making adjustments to an unlicensed transmitter, provided only that the person does not operate the transmitter "on the air".<sup>3</sup> If the adjustment of an unlicensed transmitter does not constitute unauthorized operation, then there is reason to question why a person who makes adjustments to an unlicensed transmitter should bear any responsibility to the Commission.

### The Commission Already Has All That It Needs

If the Commission needs to discourage the operation of unlicensed transmitters, it need only enforce more strenuously existing Rule Section 90.113, which already provides that "no radio transmitter shall be operated in the service governed by this part except under and in accordance with a proper authorization granted by the Commission." Rule Section 90.113 goes directly to the heart of the problem suggested by ITA/CICS, without requiring any rule making action or additional cost or entanglement by the Commission. The rule is directly enforceable upon any perpetrator. Because a fully enforceable rule already exists for dealing completely with the problem suggested by ITA/CICS, the public interest does not require any new rule making proceeding.

---

<sup>3</sup> Technical adjustments to a transmitter can be made with the transmitter connected to a non-radiating "dummy load", thereby imposing no risk of interference to other radio users.

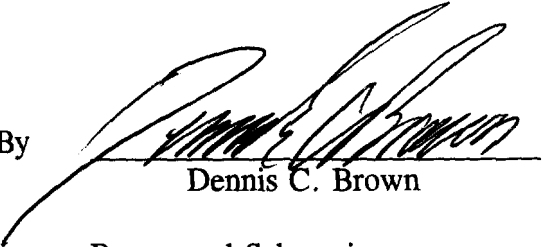


Conclusion

For all the foregoing reasons, we respectfully request that the Commission dismiss or deny the above captioned petition without further action.

Respectfully submitted,

By

A handwritten signature in black ink, appearing to read "Dennis C. Brown", is written over a horizontal line.

Dennis C. Brown

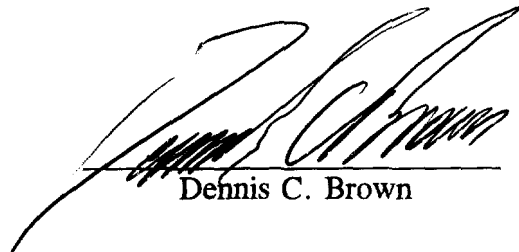
Brown and Schwaninger  
1835 K Street, N.W.  
Suite 650  
Washington, D.C. 20006  
202/223-8837

Dated: September 1, 1995

CERTIFICATE OF SERVICE

I hereby certify that on this first day of September, 1995, I served a copy of the foregoing Opposition on the following person by placing a copy in the United States Mail, first-class postage prepaid:

Frederick J. Day, Esq.  
Industrial Telecommunications Association, Inc.  
1110 N. Glebe Road  
Suite 500  
Arlington, Virginia 22201



Dennis C. Brown